

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: *	ADMINISTRATIVE CONSENT ORDER
L&W Quarries, Inc.	NO. 2012-AQ- 28
Appanoose County, Iowa	

TO: Jim Close
L&W Quarries, Inc.
100 West Jackson
P.O. Box 335
Centerville, IA 52544

I. SUMMARY

This administrative consent order (order) is entered into between the Iowa Department of Natural Resources (DNR) and L&W Quarries, Inc. (L&W) for the purpose of resolving air quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Bill Gross
Iowa Department of Natural Resources
Field Office 5
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515-725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order

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necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On June 8, 2012, DNR Field Office 5 received a complaint about a persistent dust plume at 14592 Highway J5T in Mystic, Iowa. This address is the location of a processing site for L&W (the site).

2. On June 14, 2012, Environmental Specialist Senior Bill Gross conducted an air quality inspection and opacity reading at the site. Mr. Gross observed the water spray control system was not operating. The opacity observed by Mr. Gross for the crushers was 60%, which exceeds the 15% opacity limit contained in permits issued to L&W. Similarly, the opacity observed by Mr. Gross for the conveyers was 60%, which exceeds the 10% opacity limit contained in permits issued to L&W. Later during the inspection, the water spray control system resumed operating, and opacity limits returned to permitted levels.

3. On June 26, 2012, an inspection report and Notice of Violation was sent to L&W.

History of Past Violations

1. DNR personnel have found air quality violations at the site in the past. DNR personnel found equipment location notification failure and opacity readings in excess of allowable limits during September 13, 2002, and November 7, 2002, site visits. A Notice of Violation letter regarding these violations was issued to L&W on December 6, 2002.

2. During an August 25, 2008, site visit, Field Office 5 staff member Jeff Theobald observed equipment location notification failure, record keeping violations, and excess emissions. A Notice of Violation letter regarding these violations was issued to L&W on September 8, 2008.

3. During a May 5, 2009, site visit, Mr. Theobald observed violations related to stack height, record keeping, and excess emissions. A Notice of Violation letter regarding these violations was issued to L&W on June 2, 2009.

IV. CONCLUSIONS OF LAW

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1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. The Commission has adopted 567 (IAC) chapters 20-35 relating to air quality.

2. 567 IAC chapter 24.2(1)(a) provides that control equipment shall at all times be maintained and operated in a manner consistent with good practice for minimizing emissions.

3. 40 C.F.R. Part 60 subpart OOO limits fugitive emission opacity for nonmetallic mineral processing plants to 10 percent for conveyers and 15 percent for crushers. The applicable limits have been incorporated in Air Quality Construction Permit No. 07-A-876. L&W has violated these permit limits, as described above.

V. ORDER

THEREFORE, DNR orders and L&W agrees to the following:

1. L&W shall pay a penalty of \$5,300.00 within 30 days of the date this order is signed by the Director;

2. L&W shall operate equipment and control equipment at all times in a manner which minimizes emissions; and

3. L&W shall comply with all provisions of Air Quality Construction Permit No. 07-A-876 at all times.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a \$5,300.00 administrative penalty. The administrative penalty assessed by this order is determined as follows:

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Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” The cost savings from not operating the water spray system relate to the cost of fuel or electricity. Over an extended time, the amount saved would be at least several hundred dollars. Therefore, \$300.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Failure to properly control dust emissions could degrade local air quality. Further, failure to comply with permit limits undermines the air quality program. \$2,000.00 is assessed for this factor.

Culpability – DNR field office personnel have observed various air quality violations at the site. Further, DNR has notified L&W of these air quality violations in writing on three separate occasions. These notifications included information about the air quality deficiencies and informed L&W of the air quality regulations in each instance. \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This order is entered into knowingly and with the consent of L&W. For that reason, L&W waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

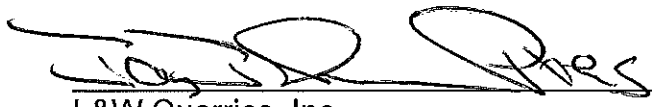
Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section “V. Order” of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section “IV. Conclusions of Law” of this order.

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Chuck Gipp, DIRECTOR
Iowa Department of Natural Resources

Dated this 15th day of
November, 2012.



L&W Quarries, Inc.

Dated this 5th day of
November, 2012.

Facility No. PP-78-000; Preziosi; DNR Field Office No. 5; VII.A.2